

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-29**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Whether purchases by Company 2 of repair parts, accessories, materials and supplies from Company 1 for use outside Tennessee on Company 2's vehicles, trailers, semi-trailers and pole trailers are exempt from Tennessee sales tax when shipped on Company 2's own trucks under a bill of lading to a destination outside Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

Company 1 is a privately held corporation that owned 100% of the stock of Company 2, an ICC common carrier. There were 1,000,000 shares of voting stock and 1,000,000

shares of non-voting stock issued by Company 2 and held by Company 1. Company 1 has assigned 20% (200,000 shares) of the non-voting stock of Company 2 to the profit sharing plan of Company 2. Company 2 has no voting power for the stock so assigned. Company 1 now owns 100% (1,000,000 shares) of the voting stock of Company 2 and 80% (800,000 shares) of the non-voting stock of Company 2. Company 1's overall ownership of the 2,000,000 shares of Company 2's voting and non-voting stock is 90% (1,800,000 shares). The assignment was for the sole purpose of allowing the employees' profit sharing plan to benefit from the success of Company 2.

It is Company 1's intention to purchase on a resale certificate and sell to Company 2 all repair parts, accessories, materials and supplies to be used by Company 2 on their freight motor vehicles with a maximum gross weight-rating classification of Class 1 or above as defined by T.C.A. § 55-4-113 and/or on Company 2's trailers, semi-trailers and pole trailers as defined by T.C.A. § 55-1-105 and T.C.A. §55-4-113.

ISSUE

Are purchases by Company 2 of repair parts, accessories, materials and supplies from Company 1 for use outside Tennessee on Company 2's vehicles, trailers, semi-trailers and pole trailers described in the facts exempt from Tennessee sales tax when shipped on Company 2's own trucks under a bill of lading to a destination outside Tennessee?

RULING

No.

ANALYSIS

On April 25, 1996, Governor Sundquist signed into law Chapter 807 of the Public Acts of 1996. The Act amended T.C.A. § 67-6-313 by adding the following new subsection:

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier's freight motor vehicles with a maximum gross weight rating classification of Class One (1) or above under Section 55-4-113, or trailers, semi-trailers and pole trailers, as defined in Sections 55-1-105 and 55-4-113, which are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this State for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

The new statute provides a sales tax exemption for repair parts, accessories, materials and supplies sold to a common carrier for use on freight motor vehicles described in the Act when such items are shipped out of Tennessee as specified on the purchaser's own vehicles for use outside Tennessee. To qualify for the exemption, the items named would have to be used outside Tennessee on the purchaser's motor vehicles based outside Tennessee. In other words, even if all other criteria set forth in the statute were met, the exemption could not be claimed for otherwise exempt repair parts, accessories, materials and supplies used on the purchaser's Tennessee based trucks sent outside Tennessee for repairs, etc.

The facts do not state whether Company 2 has any Tennessee based trucks and, if so, whether the otherwise exempted items will be used on them. However, it is not necessary to reach that issue because the exemption is not available to Company 2 for reasons explained in the following paragraphs.

The exemption in question may be claimed only if the seller and the purchaser are so affiliated that either corporation directly owns or controls 100% of the capital stock of the other corporation or, all the capital stock of both corporations is directly owned or controlled by a common parent. The statute requires direct, rather than indirect, ownership or control of capital stock. It does not matter that there is direct or indirect control of the corporation(s) or indirect control of capital stock.

According to Federal form 851 filed with the Internal Revenue Service by Company 1 and its subsidiaries, Company 1 directly owns and therefore directly controls only 1,800,000 shares (90%) of the 2,000,000 shares of stock issued by Company 2. The facts do not reflect that Company 2 owns or controls any of the stock of Company 1 or that there is a common parent that directly owns or controls all the capital stock of both Company 1 and Company 2. Therefore, the exemption statute does not apply to the described sales by Company 1 to Company 2.

Arnold B. Clapp, Senior Tax Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 10/4/96